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PSCI 461.01: Administrative Law

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PSCI 461
Administrative Law
Fall 2011

Administrative law is the part of constitutional law that deals with the work of public administrators. Its principles are closely related to the doctrines of separation of powers and due process. The traditional divisions of administrative law are the delegation doctrine (the relationship of an agency to the legislature), judicial review (the relationship of an agency to the courts), rulemaking (the procedures an agency follows when it makes law), and adjudication (the procedures an agency follows when it resolves disputes). More recent concerns of administrative law are public access to the records of agencies and the informal discretion of bureaucrats.

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Text: Steven Cann, Administrative Law, 4th edition

Grading system: Each of the two examinations can earn a maximum of 50 points. The instructor, at his discretion, may award up to 10 extra-credit points for excellence in class attendance and participation. Course grades will be determined as follows: A = 94 - 100; A- = 90 - 93; B+ = 87 - 89; B = 83 - 86; B- = 80 - 82; C+ = 77 - 79; C = 73 - 76; C- = 70 - 72; D+ = 67 - 69; D = 63 - 66; D- = 60 - 62; F = 59 and below. For the credit/no-credit grading option, a grade of D- and above will count as "credit."

Reading: Approximately 10 pages per class meeting

Optional PSCI 400 projects: Students enrolled in PSCI 400 must complete an annotated bibliography and two technical writing projects (see directions for all three below). Written work will be graded for content (clarity and validity) and writing quality (grammar, diction, syntax, and logical and clear development). Each student must meet with the instructor prior to starting each of the three projects in order to discuss its aim, scope, sources, method of citation, and style of writing. Any two of the three projects, after they are corrected and graded, may be rewritten and resubmitted for a better grade.

Graduate increment: Graduate students must consult with the instructor about options for fulfilling the University's graduate-increment requirement.

Class format: Students are expected to complete reading assignments and participate in class discussion. Class discussion will concentrate on case principles, evolution of doctrine, and practical problems. The instructor will be discussion leader and will lecture as required.

Examinations: The midterm examination date will be Monday, October 10. The final examination, which will cover material from the first test to the end of the course, is scheduled for Thursday, December 15 at 8:00 a.m. Each examination will use definition questions to test knowledge of key principles and doctrines and short-essay questions to test analytical reasoning.

PSCI 400
Annotated Bibliography Project

Write a paragraph on each of the following 14 administrative law sources (the total project will take about 7 pages). Each of these paragraphs must do three things: 1) discuss the work's purpose as an administrative law source book; 2) discuss how the work is organized; and 3) give a concrete and detailed example of how a public administrator could use beneficially a specific part or section of the source, for which you give the complete citation. All of the works are found in the UM law library; most are available in the Mansfield Library. Many of the Montana works can be accessed through links at www.lawlibrary.state.mt.us. Other public-domain works are available on the Internet at various locations. The assignment is due October 3.

1. Session Laws of Montana (1) (2)
2. Montana Code Annotated (1) (2)
3. Montana Reporter (1) (2) or State Reporter (2)
4. Pacific Reporter (2)
5. Administrative Rules of Montana (1) (2)
6. United States Statutes at Large (1) (2)
7. United States Code (1) (2) or United States Code Annotated (2)
8. U.S. Reports (1) (2) or Supreme Court Reporter (2) or Lawyers' Edition of the U.S. Supreme Court Reports (2)
9. Federal Register (1) (2)
10. Code of Federal Regulations (1) (2)
11. American Jurisprudence (2) or Corpus Juris Secundum (2)
12. K. Davis and R. Pierce, Administrative Law Treatise (2)
13. Montana Administrative Procedure Act (MCA, 2-4-101) (1) (2)
14. Administrative Law Review (2)

(1) Available in the Mansfield Library
(2) Available in the UM Law Library

PSCI 400
Administrative Rules Project

Situation. The institutional setting is the Montana Board of Land Commissioners (MBLC). Assume that you work for the Board, which has given you the assignment of implementing the rulemaking authorization in Montana Code Annotated 76-12-101 through 112 (locate and read these statutory provisions carefully). As a Board employee, you are to draft for public hearing proposed rules governing natural areas on school trust lands from the three perspectives of fee generation, recreational use, and conservation.

Work product. The work product is a draft of proposed rules concerning which the MBLC, prior to adoption, will hold a public hearing. Your product should be at least five manuscript pages (double-spaced, standard margins) and formatted as legislative rules. The draft rules must cover **one** of the following four topics: (1) over-night camping in natural areas; (2) water recreation in natural areas; (3) winter recreation in natural areas; or (4) hiking and nature viewing in natural areas. Assume that all of these topics are within the MBLC's authority. A "real world" package of draft rules would include an introductory section concerning statutory authorization and intent, but this section is not to be included in your project. In your draft rules, use "may" for the permissive and "shall" for the mandatory. Also, in order to assign responsibility clearly, use the active instead of the passive voice, unless in using the passive voice you identify the responsible party by a prepositional phrase.

Sources. The following sources could be of use to you: interviews with employees of state agencies; pertinent sections of the Administrative Rules of Montana, Code of Federal Regulations, and Montana Code Annotated; and a variety of studies and reports concerning natural resource management. Your work product may be derivative, but it may not be a verbatim lifting of existing state and federal regulations. At the end of your project you must include a list of "Sources Used."

Deadline. The assignment is due November 1.

PSCI 400
Adjudicatory Hearing Project

Situation. The governmental setting is your choice - any State of Montana agency. You should assume that this state agency is not covered by a government-wide personnel policy or by a collective bargaining agreement. You should also assume that you are the head of the agency and that the agency lacks a formal policy concerning the procedure to be used for terminating the employment of a civil-service employee who is beyond the probationary period. As head of the agency, you are writing a memorandum to the agency attorney that explains your concern that the agency lacks such a policy and provides for the attorney's review and comment a termination procedure that you have drafted.

Work product. Your work product will be a five-page memorandum to the agency attorney that contains three things: (1) a summary of the situation the agency is confronting (that is, no policy/procedure and an impending personnel problem); (2) your draft of a suggested adjudicatory procedure for terminating non-probationary civil service employees, which is formatted as you would expect the final policy to be formatted and contains such key procedural ingredients as notice requirements, use of a hearing board or hearing officer, the steps in the termination hearing, the hearing's degree of formality, the recommendation of the board or hearing officer to the agency head, the agency head's final decision and statement of reasons, administrative appeal, judicial review, and a reasonable timetable for these various steps; and (3) your legal justification for your draft procedure and your request that the agency attorney review and comment on your draft. In your draft adjudicatory procedure, be sure to use the word "may" for the permissive and the word "shall" for the mandatory, and generally use the active voice instead of the passive voice to assign clearly responsibility for implementing the various procedural steps.

Sources. The following sources could be of use to you: the federal and Montana administrative procedure acts; disciplinary and termination sections of public collective bargaining agreements; personnel policies of federal, state and local government agencies; Goldberg v. Kelly, 397 U.S. 254 (1970); and Mathews v. Eldridge, 424 U.S. 319 (1976). Even though you may rely heavily on these sources, your work product may not be a verbatim lifting of material. In a short "Sources" note at the end of your project, identify the materials you consulted and used.

Deadline. The assignment is due December 2.